

**ASSEMBLY BILL**

**No. 21**

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**Introduced by Assembly Member De Leon  
(Coauthors: Assembly Members Beall, Carter, Eng, Evans, Hill,  
and Lieu)**

January 6, 2009

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An act to relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 21, as introduced, De Leon. Corporate reorganization: built-in losses.

The Corporation Tax Law, in specified conformity to federal income tax laws, imposes certain limitations on the use of built-in losses in conjunction with corporate reorganizations.

This bill would clarify that a specified federal administrative notice relating to those limitations does not apply for purposes of California law.

The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. The Governor issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on December 19, 2008.

This bill would state that it addresses the fiscal emergency declared by the Governor by proclamation issued on December 19, 2008, pursuant to the California Constitution.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. (a) The Legislature finds and declares the  
2 following:

3     (1) The Personal Income Tax Law (Part 10 (commencing with  
4 Section 17001) of Division 2 of the Revenue and Taxation Code)  
5 and the Corporation Tax Law (Part 11 (commencing with Section  
6 23001) of Division 2 of the Revenue and Taxation Code) provide  
7 for specified conformity to various referenced provisions of the  
8 federal Internal Revenue Code, as enacted as of a specified date.

9     (2) Those laws provide that for taxable years beginning on or  
10 after January 1, 2005, the conformity date specified in California  
11 law for those referenced Internal Revenue Code sections is January  
12 1, 2005, except as otherwise specifically provided.

13     (3) Included among the federal provisions conformed to as  
14 enacted as of January 1, 2005, are the provisions of Section 382  
15 of the Internal Revenue Code, relating to limitations on net  
16 operating loss carryforwards and certain built-in losses following  
17 ownership change.

18     (4) As enacted as of January 1, 2005, Section 382 of the Internal  
19 Revenue Code applied to financial institutions.

20     (5) On October 20, 2008, the Internal Revenue Service issued  
21 Notice 2008-83, 2008-42 I.R.B. 905, stating that “for purposes of  
22 section 382(h), any deduction properly allowed after an ownership  
23 change (as defined in section 382(g)) to a bank with respect to  
24 losses on loans or bad debts (including any deduction for a  
25 reasonable addition to a reserve for bad debts) shall not be treated  
26 as a built-in loss or a deduction that is attributable to periods before  
27 the change date.”

28     (6) Notice 2008-83, which precludes the application of  
29 provisions of Section 382 of the Internal Revenue Code to financial  
30 institutions, constitutes a substantive change to Section 382 of the  
31 Internal Revenue Code, as enacted as of January 1, 2005.

32     (7) This state conformed to Section 382 of the Internal Revenue  
33 Code, as enacted as of January 1, 2005, but has not conformed to  
34 any changes to Section 382 of the Internal Revenue Code set forth  
35 in Notice 2008-83.

36     (b) Inasmuch as this state has not conformed to the changes set  
37 forth in Notice 2008-83 or otherwise modified the application of  
38 Section 382 of the Internal Revenue Code for purposes of state

1 income and corporation tax laws, the Franchise Tax Board is  
2 directed not to apply the provisions of Notice 2008-83 for purposes  
3 of the Personal Income Tax Law or the Corporation Tax Law.

4 SEC. 2. This act addresses the fiscal emergency declared by  
5 the Governor by proclamation on December 19, 2008, pursuant  
6 to subdivision (f) of Section 10 of Article IV of the California  
7 Constitution.

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